

PROJECT NO. 45113

**PROJECT TO AMEND CHAPTER 24 § PUBLIC UTILITY COMMISSION
FOR WATER/SEWER RULES FOR §
RATE APPEALS § OF TEXAS**

**ORDER ADOPTING AMENDMENT TO §24.41
AS APPROVED AT THE DECEMBER 1, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §24.41, relating to appeal of rate-making decision, pursuant to the Texas Water Code §13.043 (TWC) with changes to the proposed text as published in the September 2, 2016 issue of the *Texas Register* (41 TexReg 6605). The amendment will allow the commission's substantive rule relating to water and sewer rate-making decisions to conform to §4 of Senate Bill 1148 (SB 1148) of the 84th Legislature, Regular Session, which amended TWC Chapter 13 (West 2008 & Supp. 2016) (TWC). The amendment will add provisions to §24.41 relating to a person's access to a municipal water/sewer utility's ratepayer count and ratepayers' names and addresses in order to implement §4 of SB 1148. Additionally, the amendment makes minor changes to clarify the filing procedures for petitions filed under TWC §13.043(c). The amendment is adopted under Project Number 45113.

No public hearing was requested after the proposed amendment's publication in the September 2, 2016 issue of the *Texas Register*. The commission received written comments on the proposed amendment from the Office of Public Utility Counsel (OPUC). The commission received no reply comments. The commission summarizes and responds below to the comments received.

*Comments on specific sections of the rule**Section 24.41(c)(3)*

OPUC commented that the proposed amendment should require that ratepayers of municipally owned utilities be notified of their right to opt-out of having their personal information disclosed. OPUC explained that under SB 1148, a ratepayer's personal information is subject to the confidentiality protections of Tex. Util. Code §182.052(b), but that this provision is only triggered upon request of the ratepayer. OPUC argued that ratepayers therefore must be made aware of their right to make their personal information confidential under Tex. Util. Code §182.052(b). OPUC recommended that this be accomplished by requiring a municipally owned utility to inform 14 ratepayers of their right to opt-out in any notice of a rate change provided to the utility's customers.

Commission response

The commission agrees with OPUC's recommendation and adopts it by adding language similar to that proposed by OPUC.

OPUC further recommended that any person who requests information under subsection (c)(3)(A)(ii) be required to provide and verify his or her name, address, and phone number, and that the municipality be required to retain that information and make that information available to affected ratepayers.

Commission response

The commission declines to adopt OPUC's recommendation, as it is not a requirement of SB 1148.

Section 24.41(e)

OPUC recommended that the commission make changes to subsection (e) regarding the scope of the commission's appellate review and information that the commission may consider during its review. To begin, OPUC suggested that subsection (e)(5) be amended to clarify the meaning of "information that was available" to the governing body. OPUC argued that this language is unclear and should be clarified. Second, OPUC argued that the rule should be amended to provide the standard by which budgeted information will be evaluated. OPUC stated a preference for historical test year information to be used in rate setting, but asked that where budgeted expenses are used, the rule should require that those budgeted expenses be reliable.

Commission response

The commission declines to adopt OPUC's recommendation. Such changes would be beyond the scope of the changes that were originally noticed in this project.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and

jurisdiction, including rules of practice and procedure, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§24.41. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.

- (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition on all parties to the original rate proceeding.
- (b) An appeal under TWC §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

- (c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water utility, sewer utility, or drainage rates to the commission:
- (1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;
 - (2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;
 - (3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;
 - (A) A municipally owned utility shall:
 - (i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and
 - (ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.
 - (B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code Ann. §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any person. A municipally owned utility shall inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code Ann. §182.052 in any notice provided under the requirement of

Tex. Water Code Ann §13.043(i).

- (C) In complying with this subsection, the municipally owned utility:
- (i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;
 - (ii) shall provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and
 - (iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.
- (4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users;
- (5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries; and
- (6) in an appeal under this subsection, the retail public utility shall provide written notice of hearing to all affected customers in a form prescribed by the commission.
- (d) In an appeal under TWC §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is

carried.

- (e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:
- (1) in an appeal under the TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;
 - (2) in an appeal under the TWC §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;
 - (3) establish the effective date;
 - (4) order refunds or allow surcharges to recover lost revenues;
 - (5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or
 - (6) establish interim rates to be in effect until a final decision is made.
- (f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.

- (g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.
- (1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amount(s) due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount(s) determined in the commission's order shall be refunded to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission.
- (2) In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.
- (3) A determination made by the commission on an appeal from an applicant for

service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

- (h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.
- (i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.
- (j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer shall initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission shall approve the water supply corporation's water conservation penalty if:
 - (1) the penalty is clearly stated in the tariff;

- (2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and
- (3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §24.41, relating appeal of rate-making decision, pursuant to the Texas Water Code §13.043, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of December 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER